

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	98 C 699	DATE	11/15/2001
CASE TITLE	Kenneth Bockwoldt, Jr. Vs. Officer Daniel J. Cheney etc.et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Memorandum Opinion and Order

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Opinion and Order. Plaintiff's motion for a new trial is denied.

- (11) ☒ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.	 01 NOV 15 PM 2:49	number of notices	Document Number 57
No notices required.		NOV 16 2001	
Notices mailed by judge's staff.		date docketed	
Notified counsel by telephone.		15	
<input checked="" type="checkbox"/> Docketing to mail notices.		docketing deputy initials	
Mail AO 450 form.			date mailed notice
Copy to judge/magistrate judge.		mailing deputy initials	
WAH	courtroom deputy's initials	Date/time received in central Clerk's Office	

DOCKETED
NOV 16 2001

Plaintiff,

VS.

No. 98 C 699

OFFICER DANIEL J. CHENEY,
individually,

Defendants.


When the jury indicated that it was unable to reach a unanimous verdict we recalled them into court and repeated the current version of the Silvern instruction. But before repeating it I said, “You know, if you don’t reach agreement, that everybody is going to have to do this all over again.” It was an unfortunate choice of language. I have no doubt that the jurors understood that if they did not reach a verdict the case would have to be retried at some time. We do credit jurors with common sense.

But could they have believed that they would be held over to retry the case? The language used is perhaps capable of that interpretation. Neither party objected, however, although an objection would have prompted an immediate clarification. Again, we credit jurors with common sense. They were properly instructed with a Silvern repetition, which emphasizes the need for independent and individual judgment. They were out for over an hour more before reaching agreement. The language used by no means advised them that they would have to retry the case. And such a scenario defies common sense. Why retry a case to a jury that had been unable to reach a verdict? Again, we do credit jurors with common sense. In the circumstances we do not believe that the instructions as a whole were

coercive or placed expediency over the jurors' conscientious views of the sufficiency of the evidence. *See United States v. Rodriguez*, 67 F.3d 1312, 1320-21 (7th Cir. 1995).

Plaintiff's motion for a new trial is denied.

Nov. 15, 2001.



JAMES B. MORAN
Senior Judge, U. S. District Court